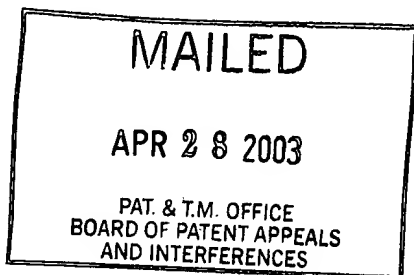




## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Carol A. Spiegel  
Telephone: (703) 308-9797  
Facsimile: (703) 305-0942



Applicants: Harrington et al.  
Application No.: 09/276,820  
Filed: 03/26/99  
For: Compositions and methods for non-targeted activation of endogenous genes

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,104.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

  
\_\_\_\_\_  
Carol A. Spiegel  
Administrative Patent Judge

The opinion in support of the decision being  
entered today is not binding precedent of the Board.

Paper 1

By: Carol A. Spiegel  
Administrative Patent Judge  
Box Interference  
Washington, DC 20231  
Tel: 703-308-9797  
Fax: 703-305-0942

Filed: April 28, 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Carol A. Spiegel)

BRIAN ZAMBROWICZ,  
GLENN FRIEDRICH and ARTHUR T. SANDS

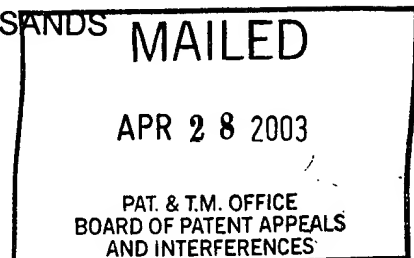
Junior party,  
U.S. Patent 6,080,576

v.

JOHN J. HARRINGTON,  
BRUCE SHERF and STEPHEN RUNDLETT

Senior party,  
Application 09/276,820

Patent Interference No. 105,104



**NOTICE DECLARING INTERFERENCE**  
(37 CFR § 1.611)

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. §135(a)) between the above-identified parties.

Details of the application(s), patent (if any), reissue application (if any), count(s)

and claims designated as corresponding or not corresponding to the count(s) appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

**Part B. Judge designated to handle the interference**

Administrative Patent Judge Carol A. Spiegel has been designated to handle the interference. 37 CFR § 1.601(a).

**Part C. Standing order**

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

**Part D. Conference call to set dates**

A telephone call to set dates for taking action in the interference is scheduled for **10:00 a.m. on June 23, 2003** (the call will be initiated from the PTO).

No later than **two business days** prior to the conference, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See § 17 of the STANDING ORDER.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE.

Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some mutual agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

The parties were also invited to consider participation in a voluntary electronic filing pilot project. A sample order setting procedures for electronic transmittal of papers is attached (see <http://www.uspto.gov/web/offices/dcom/bpai/its.htm>, University of New Mexico v. Fordham University, Interference No. 104,671, Paper 21).

**Part E.      The parties involved in this interference are:**

Junior party

**Named inventor:**            BRIAN ZAMBROWICZ, The Woodlands, Texas  
                                     GLENN FRIEDRICH, The Woodlands, Texas  
                                     ARTHUR T. SANDS, The Woodlands, Texas

**Patent:**                        U.S. 6,080,576  
                                     issued June 27, 2000,  
                                     based on application 09/057,328,  
                                     filed April 8, 1998

**Title:**                            Vectors for Gene Trapping and Gene Activation

**Assignee:**                    LEXICON GENETICS INCORPORATED

**Accorded benefit:**            provisional application 60/079,729,  
                                     filed March 27, 1998

**Attorneys:**                    See last page

**Address:**                      See last page

Senior party

Named inventors: JOHN J. HARRINGTON, Mentor, Ohio  
BRUCE SHERF, Spencer, Ohio  
STEPHEN RUNDLETT, Chagrin Falls, Ohio

Application: 09/276,820,  
filed March 26, 1999

Title: Compositions and Methods for Non-Targeted Activation of  
Endogenous Genes

Assignee: ATHERSYS INC.

Accorded benefit: U.S. application 09/263,814,  
filed March 8, 1999,  
  
U.S. application 09/253,022,  
filed February 19, 1999,  
  
U.S. application 09/159,643,  
filed September 24, 1998,  
  
U.S. application 08/941,223,  
filed September 26, 1997

Attorneys: See last page

Address: See last page

**Part F. Count and claims of the parties:**

After my full searching

Count 1

A method according to Zambrowicz (6,080,576) claim 15 or Harrington  
(09/276,820) claim 271.

The claims of the parties are:

Zambrowicz	1-21
Harrington	271

The claims of the parties which correspond to Count 1 are:

Zambrowicz	15-21
Harrington	271

The claims of the parties which do not correspond to Count 1,  
and therefore are not involved in the interference, are:

Zambrowicz	1-14
Harrington	none

**Part G. Heading to be used on papers**

The following heading shall be used on papers filed in the interference. See  
§ 18 of the STANDING ORDER.

Filed on behalf of [name of party]

Paper \_\_\_\_\_<sup>1</sup>

By: Name of lead counsel, Esq.  
Name of backup counsel, Esq.  
Street address  
City, State and Zip-Code  
Tel:  
Fax:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Carol A. Spiegel)

BRIAN ZAMBROWICZ,  
GLENN FRIEDRICH and ARTHUR T. SANDS

Junior party;  
U.S. Patent 6,080,576

v.

JOHN J. HARRINGTON,  
BRUCE SHERF and STEPHEN RUNDLETT

Senior party,  
Application 09/276,820

Patent Interference No. 105,104

TITLE OF PAPER

<sup>1</sup> Leave a blank line because the Board assigns the paper number.

**Part H. Summary of dates for taking action**

Times for taking action are set out in the following sections of the STANDING ORDER:

1. **§ 7:** date for identifying lead and backup counsel.
2. **§ 8:** date for identifying any real party in interest.
3. **§ 9:** date for requesting copies of involved and benefit applications and patents.
4. **§ 17:** date for filing list of proposed preliminary motions.
5. **§ 19:** date for accomplishing certain discovery.
6. **§ 20:** date for filing clean copy of claims.
7. **§ 21:** date for filing clean copy of claims in cases with drawings and/or claims containing a means plus function limitation.
8. **§ 23:** dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
9. **§ 33:** date for objecting to admissibility of evidence.
10. **§ 34:** date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
11. **§ 35:** dates when cross-examination can take place.
12. **§ 45:** dates for taking action with respect to settlement discussions.



**Part I. Order form for requesting file copies**

**FILE COPY REQUEST**

Interference 105,104 (CAS)

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address, including street, city, state, zip code and telephone number (do not list a Post Office box inasmuch as file copies are sent via commercial overnight courier).

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Telephone, including area code: \_\_\_\_\_

**Part J.      Signatur   of administrative pat nt judge**

  
\_\_\_\_\_  
CAROL A. SPIEGEL  
Administrative Patent Judge

Date: April 28, 2003  
Arlington, VA

Enc:

Copy of STANDING ORDER

Copy of order used for setting times for taking action in the preliminary motion phase of the interference (ORDERPM6)

Copy of order used for setting times for taking action in the testimony and briefing phases of the interference (ORDERTE6)

Copy of U.S. Patent 6,080,576

Copy of claims of application 09/276,820

Copy of sample order setting procedures for electronic transmittal of papers

Copy of PTO-850

cc (via overnight mail):

Attorney for Zambrowicz  
(real party in interest  
LEXICON GENETICS INCORPORATED)

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1300 I Street, N.W.  
Washington, D.C. 20005-3315  
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(real party in interest  
ATHERSYS INC.)

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1033 N. Fairfax Street, Suite 306  
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Tel: 703-683-3600